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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ERICA ZOZULA, individually and on)	Case No.
behalf of all others similarly situated,)	
	)	<u>CLASS ACTION</u>
Plaintiff,)	
	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS
SURVEY SAMPLING	)	OF THE TELEPHONE
INTERNATIONAL, LLC, and DOES 1	)	CONSUMER PROTECTION
through 10, inclusive, and each of them	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
Defendant.	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiff ERICA ZOZULA (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of SURVEY SAMPLING
8 INTERNATIONAL, LLC (“Defendant”), in negligently, knowingly, and/or
9 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the
10 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and related
11 regulations, specifically the “automatic telephone dialing system” and “artificial or
12 prerecorded voice” provisions, thereby invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
15 a resident of California, seeks relief on behalf of a Class, which will result in at
16 least one class member belonging to a different state than that of Defendant, a
17 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
18 in violation of the TCPA, which, when aggregated among a proposed class in the
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
20 Therefore, both diversity jurisdiction and the damages threshold under the Class
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern
23 District of California pursuant to 28 U.S.C. 1391(b) and because Defendant does
24 business within the State of California and Plaintiff resides within the County of
25 Alameda.

26 **PARTIES**

27 4. Plaintiff, ERICA ZOZULA (“Plaintiff”), is a natural person residing
28 in Castro Valley, California and is a “person” as defined by 47 U.S.C. § 153 (39).

1 5. Defendant, SURVEY SAMPLING INTERNATIONAL, LLC
2 (“Defendant”) is a data research company, and is a “person” as defined by 47
3 *U.S.C. § 153 (39)*.

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants.

18 **FACTUAL ALLEGATIONS**

19 8. Beginning in or around December 2015, Defendant contacted Plaintiff
20 on Plaintiff’s cellular telephone number ending in -9260, in an attempt to acquire
21 information from Plaintiff for purposes of survey research.

22 9. Defendant used an “automatic telephone dialing system” (“ATDS”)
23 and an “artificial or prerecorded voice” as defined by 47 *U.S.C. § 227(a)(1)* to place
24 its call to Plaintiff seeking to gather information for purposes of survey research.

25 10. Defendant contacted or attempted to contact Plaintiff from telephone
26 numbers (510) 455-8177 and (510) 455-8180.

27 11. Defendant’s calls constituted calls that were not for emergency
28 purposes as defined by 47 *U.S.C. § 227(b)(1)(A)*.

1 12. Defendant's calls were placed to telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to 47 U.S.C. § 227(b)(1).

4 13. During all relevant times, Defendant did not possess Plaintiff's "prior
5 express consent" to receive calls using an automatic telephone dialing system or an
6 artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 14. Defendant placed multiple calls attempting to gather survey research
9 to Plaintiff on her cellular telephone ending in -9260 beginning in or around
10 December 2015.

11 15. Plaintiff received numerous survey calls from Defendant within a 24-
12 month period.

13 16. Plaintiff requested for Defendant to stop calling Plaintiff during one
14 of the initial calls from Defendant, thus revoking any prior express consent that had
15 existed and terminating any established business relationship that had existed, as
16 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

17 17. Despite this, Defendant continued to call Plaintiff using an automatic
18 dialer in an attempt to gather survey research and in violation of the ADTS
19 provisions of the TCPA.

20 18. Upon information and belief, and based on Plaintiff's experiences of
21 being called by Defendant after requesting they stop calling, and at all relevant
22 times, Defendant failed to establish and implement reasonable practices and
23 procedures to effectively prevent survey calls made by an automatic dialer and/or
24 an artificial or prerecorded voice in violation of the regulations prescribed under
25 47 U.S.C. § 227(b)(3).

26 19. When Plaintiff would answer Defendant's calls a pre-recorded
27 message would start, and, despite Plaintiff repeatedly requesting that Defendant
28 stop calling her, the pre-recorded message would follow the exact same script each

1 time, which is indicative of an automated telephone dialing system and/or an
2 artificial or prerecorded voice.

3 **CLASS ALLEGATIONS**

4 20. Plaintiff brings this action individually and on behalf of all others
5 similarly situated, as a member the two proposed classes (hereafter, jointly, “The
6 Classes”). The class concerning the ATDS claim for no prior express consent
7 (hereafter “The ATDS Class”) is defined as follows:

8 All persons within the United States who received any
9 survey telephone calls from Defendant to said person’s
10 cellular telephone made through the use of any automatic
11 telephone dialing system or an artificial or prerecorded
12 voice and such person had not previously consented to
13 receiving such calls within the four years prior to the
14 filing of this Complaint

15 21. The class concerning the ATDS claim for revocation of consent, to the
16 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
17 as follows:

18 All persons within the United States who received any
19 survey telephone calls from Defendant to said person’s
20 cellular telephone made through the use of any automatic
21 telephone dialing system or an artificial or prerecorded
22 voice and such person had revoked any prior express
23 consent to receive such calls prior to the calls within the
24 four years prior to the filing of this Complaint.

25 22. Plaintiff represents, and is a member of, The ATDS Class, consisting
26 of all persons within the United States who received any survey telephone calls
27 from Defendant to said person’s cellular telephone made through the use of any
28 automatic telephone dialing system or an artificial or prerecorded voice and such
person had not previously not provided their cellular telephone number to

1 Defendant within the four years prior to the filing of this Complaint.

2 23. Plaintiff represents, and is a member of, The ATDS Revocation Class,
3 consisting of all persons within the United States who received any survey
4 telephone calls from Defendant to said person's cellular telephone made through
5 the use of any automatic telephone dialing system or an artificial or prerecorded
6 voice and such person had revoked any prior express consent to receive such calls
7 prior to the calls within the four years prior to the filing of this Complaint.

8 24. Defendant, its employees and agents are excluded from The Classes.
9 Plaintiff does not know the number of members in The Classes, but believes the
10 Classes members number in the thousands, if not more. Thus, this matter should
11 be certified as a Class Action to assist in the expeditious litigation of the matter.

12 25. The Classes are so numerous that the individual joinder of all of its
13 members is impractical. While the exact number and identities of The Classes
14 members are unknown to Plaintiff at this time and can only be ascertained through
15 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
16 The Classes includes thousands of members. Plaintiff alleges that The Classes
17 members may be ascertained by the records maintained by Defendant.

18 26. Plaintiff and members of The ATDS Class and The ATDS Revocation
19 Class were harmed by the acts of Defendant in at least the following ways:
20 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
21 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
22 members to incur certain charges or reduced telephone time for which Plaintiff and
23 ATDS Class and ATDS Revocation Class members had previously paid by having
24 to retrieve or administer messages left by Defendant during those illegal calls, and
25 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
26 members.

27 27. Common questions of fact and law exist as to all members of The
28 ATDS Class which predominate over any questions affecting only individual

1 members of The ATDS Class. These common legal and factual questions, which
2 do not vary between ATDS Class members, and which may be determined without
3 reference to the individual circumstances of any ATDS Class members, include,
4 but are not limited to, the following:

- 5 a. Whether, within the four years prior to the filing of this
6 Complaint, Defendant made any call (other than a call made for
7 emergency purposes or made with the prior express consent of
8 the called party) to a ATDS Class member using any automatic
9 telephone dialing system or any artificial or prerecorded voice
10 to any telephone number assigned to a cellular telephone
11 service;
- 12 b. Whether Plaintiff and the ATDS Class members were damaged
13 thereby, and the extent of damages for such violation; and
- 14 c. Whether Defendant should be enjoined from engaging in such
15 conduct in the future.

16 28. As a person that received numerous survey calls from Defendant using
17 an automatic telephone dialing system or an artificial or prerecorded voice, without
18 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The
19 ATDS Class.

20 29. Common questions of fact and law exist as to all members of The
21 ATDS Revocation Class which predominate over any questions affecting only
22 individual members of The ATDS Revocation Class. These common legal and
23 factual questions, which do not vary between ATDS Revocation Class members,
24 and which may be determined without reference to the individual circumstances of
25 any ATDS Revocation Class members, include, but are not limited to, the
26 following:

- 27 a. Whether, within the four years prior to the filing of this
28 Complaint, Defendant made any call (other than a call made for

1 emergency purposes or made with the prior express consent of
2 the called party) to an ATDS Revocation Class member, who
3 had revoked any prior express consent to be called using an
4 ATDS, using any automatic telephone dialing system or any
5 artificial or prerecorded voice to any telephone number
6 assigned to a cellular telephone service;

7 b. Whether Plaintiff and the ATDS Revocation Class members
8 were damaged thereby, and the extent of damages for such
9 violation; and

10 c. Whether Defendant should be enjoined from engaging in such
11 conduct in the future.

12 30. As a person that received numerous survey calls from Defendant using
13 an automatic telephone dialing system or an artificial or prerecorded voice, after
14 Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that
15 are typical of The ATDS Revocation Class.

16 31. Plaintiff will fairly and adequately protect the interests of the members
17 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
18 class actions.

19 32. A class action is superior to other available methods of fair and
20 efficient adjudication of this controversy, since individual litigation of the claims
21 of all Class members is impracticable. Even if every Class member could afford
22 individual litigation, the court system could not. It would be unduly burdensome
23 to the courts in which individual litigation of numerous issues would proceed.
24 Individualized litigation would also present the potential for varying, inconsistent,
25 or contradictory judgments and would magnify the delay and expense to all parties
26 and to the court system resulting from multiple trials of the same complex factual
27 issues. By contrast, the conduct of this action as a class action presents fewer
28 management difficulties, conserves the resources of the parties and of the court

system, and protects the rights of each Class member.

33. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

34. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

37. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

38. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

41. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

42. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- An order for injunctive relief prohibiting such conduct by Defendants in the future.
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 2nd Day of August, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff